

**INDIVIDUAL RULES OF THE
HONORABLE ALVIN K. HELLERSTEIN
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

Effective December 10, 2014

Chambers

Room 1050
United States Courthouse
500 Pearl Street
New York, New York 10007
Tel: (212) 805-0152
Fax: (212) 805-7942

Courtroom

Room 14D
United States Courthouse
500 Pearl Street
New York, New York 10007
(212) 805-0127

Unless otherwise ordered by Judge Hellerstein, matters before him shall be conducted in accordance with the following practices:

- 1. Communications with Chambers.** In general, there should be no need to communicate with Chambers. All information related to a case can be obtained by visiting the Court's Electronic Case Filing ("ECF") system.
 - A. Letters.** Parties shall send to Chambers a hard copy of all letters. Copies of letters to Chambers shall simultaneously be delivered to all counsel in no less speedy a manner than the method of delivery to the Court. Counsel shall not copy the Court on correspondence between and among them. Refer to Rule 2.E below for letters concerning disputes. Parties are not permitted to file letter briefing in lieu of formal memoranda of law, unless special permission to do so is granted.
 - B. Method of Delivery.** Copies of all documents shall either be mailed to Chambers or left with the Court Security Officer at the Worth Street entrance of the Courthouse. Papers shall not be delivered directly to Chambers unless special permission to do so is granted.
 - i. Faxes.** Faxes may be sent only for urgent matters requiring an immediate response from Chambers, to request an adjournment or extension of time as provided by Rule 1.D, or to make a technology request as provided by Rule 1.F. Faxes should be brief, and may not exceed 5 pages without special permission from Chambers. Do not follow faxes with a hard copy.
 - ii. ECF.** Letters filed on ECF must also be sent to Chambers, either by mail or by fax if five pages or under.

- C. Telephone Calls.** Phone calls are not permitted (i) to seek adjournments, (ii) for inquiries as to the status of a pending motion, (iii) for oral interpretation or clarification of written orders, or (iv) to seek guidance on procedures that are governed by these Individual Rules, the Local Rules of this Court, or the Federal Rules.
- D. Requests for Adjournments or Extensions of Time.** All requests for adjournments (including adjournments of court conferences) or extensions of time must be made in writing at least 48 hours before the scheduled deadline or date of appearance. All requests must state: (i) the original date; (ii) the number of previous requests for adjournment or extension; (iii) whether these previous requests were granted or denied; (iv) whether the adversary consents, and, if not, the reasons by the applicant, and by the adversary, for and against the relief requested; and (v) all other dates previously scheduled after the original date, including dates for conferences with the Court, and a suggested modified schedule, agreed to by all other counsel. Requests may be submitted by fax if they do not exceed 5 pages.
- i. DO NOT** call Chambers or the Courtroom (i) to announce your intention to request an adjournment, (ii) to inquire about the status of your request, (iii) to confirm that your request has been received, unless more than 5 business days have lapsed since you sent your request, or (iv) to ask permission to fax a letter requesting an adjournment or extension. Requests for adjournments or extensions of time may be made by fax without advance permission.
 - ii. DO NOT** file requests for adjournments or extensions of time on ECF without also sending a hard copy or fax of the request to Chambers. (See 1(B)(ii).)
- E. ECF Cases.** All civil and criminal cases (except pro se and special cases) filed on or after March 1, 2004 assigned to Judge Hellerstein are ECF cases. All counsel must register for ECF in each case pending before this Court. Counsel are responsible for checking their registered email and court docket sheet for memo-endorsements and orders. If counsel are not receiving such emails, please contact the ECF Help Desk at (212) 805-0800.
- F. Technology Requests.** Under appropriate circumstances, counsel may bring laptops and other technology, such as projectors, into the courtroom. Counsel who wish to bring such technology into the courtroom must fill out the technology request form provided on the Court's website (under *Local Rules/Standing Orders* – Electronic Device Order). Counsel shall submit a hard copy of the request, along with a letter explaining the need for the technology requested. The letter and technology form may be faxed to Chambers.

2. Conferences, Pleadings & Motions.

- A. **Conferences in Civil Cases.** Conferences in all civil cases will generally be called after Answers are filed and on Fridays at 10:00 a.m. Lawyers in charge of the case shall be present. Counsel shall bring with them a proposed case management plan, using the form attached to these Individual Rules.
- B. **Motions.** Counsel shall not request a pre-motion or permission to file a motion. Motions may be filed in the discretion of the attorneys, and shall conform to the Federal Rules of Civil Procedure. Letter motions or oppositions will not be accepted.
- C. **Filing of Motion Papers.** Motion papers shall be filed promptly after service. All motions, and courtesy copies of all motions, shall include a table of contents listing all affidavits and exhibits. The Court does not impose a page limit for briefs.
 - i. **Affidavit and Exhibit Requirements.** All affidavits and exhibits shall conform to the following requirements.
 - I. Affidavits and exhibits shall be clearly identified by tabs on both original and courtesy copies.
 - II. All affidavits, exhibits, and motions shall be bound.
 - III. Exhibits shall be marked sequentially such that no exhibit number or letter repeats, regardless of the affidavit to which it is attached. Exhibits for plaintiffs should be marked by numbers; exhibits for defendants should be marked by letters. Parties shall refer to exhibits already filed and not duplicate them.
- D. **Oral Argument on Motions.** Motions shall be returnable on any day of the week. Counsel shall not appear in Court on the return date. The Court will schedule the date and time for argument if it desires argument.
- E. **Disputes.** Unless directed otherwise, counsel shall describe their disputes in a single letter, jointly composed. Separate and successive letters will be returned, unread. Strict adherence to the meet and confer rule is required and should be described in the joint submission as to time, place and duration, naming the counsel involved in the discussion. The Court will not resolve disputes not brought to its attention in conformity with this rule.
- F. **Courtesy Copies.** Parties shall send to Chambers one courtesy copy of all pleadings, motions, and supporting papers, except motions for admission *pro hac vice*. If a submission contains exhibits totaling over 100 cumulative pages, parties shall not send courtesy copies of the exhibits. In that case, and if exhibits contain sealed or redacted information, exhibits shall be submitted by CD. In any event, courtesy copies are to be submitted without plastic covers.

3. Pretrial Procedures

- A. Joint Pretrial Orders in Civil Cases.** Following the close of discovery, unless otherwise ordered by the Court, a final pretrial conference will be scheduled as close as possible to the date that the trial is scheduled to begin. The parties shall submit, three days prior to that conference, for the Court's approval, a joint pretrial order, which shall include the following:
- i.** The full caption of the action, omitting all dismissed parties.
 - ii.** The names, addresses (including firm names), e-mail addresses, and telephone and fax numbers of trial counsel.
 - iii.** A brief statement by plaintiff as to the basis of subject matter jurisdiction, and a brief statement by each other party as to the presence or absence of subject matter jurisdiction. Such statements shall include citations to all statutes and cases relied on and relevant facts as to citizenship and jurisdictional amount.
 - iv.** A brief summary of the claims and defenses to be tried, without recital of evidentiary matter but including citations to all statutes and cases relied on.
 - v.** A copy of the pleadings marked to show, for each claim and defense, in the margin next to each allegation thereof, the admissions and denials; and if any claims or defenses have been withdrawn or previously determined.
 - vi.** A statement as to whether the case is to be tried with or without a jury, and the estimated number of trial days (including direct and cross-examination for all witnesses).
 - vii.** A statement as to whether or not all parties have consented to trial of the case by a magistrate judge (without identifying which parties have or have not so consented).
 - viii.** Any stipulations or agreed statements of fact or law.
 - ix.** A list of each party's witnesses actually intended to be called, and, if the witness cannot be present and will testify through deposition, the precise portions of deposition transcripts actually intended to be introduced together with any cross-designations and objections by any other party.
 - x.** A list of exhibits actually intended to be offered at trial, indicating exhibits to which no party objects on grounds of authenticity and exhibits to which no party objects on any ground. Exhibits for plaintiffs should be marked by numbers; exhibits for defendants should be marked by letters; and plaintiffs and defendants shall bring to the conference loose-leaf exhibit binders of all exhibits they actually intend to offer at the trial. Defendants shall not duplicate exhibits identified by Plaintiffs.

B. Filings Prior to Trial in Civil Cases. On or before a date set by the Court, prior to trial, each party shall submit, in duplicate:

- i. A pretrial memorandum, describing the party's position on the factual and legal issues to be tried.
- ii. In jury cases, proposed requests to charge and proposed voir dire questions.
- iii. In non-jury cases, proposed findings of fact and conclusions of law for each claim and defense.
- iv. The submissions described in ii and iii above shall be in both hard copy and electronically in MS Word format (by email or CD-Rom).
- v. Motions in limine will be heard at the final pre-trial conference. Counsel shall schedule the motions to suit their convenience, providing sufficient time for the court to understand, and rule on, the disputed issues.

4. Confidentiality Provisions.

A. Protective Orders. Court records and docket sheets are to be accessible to the public, and enjoy a presumption of openness to public inspection. The presumption "is rebuttable upon demonstration that suppression is essential to preserve higher values and is narrowly tailored to serve that interest." The Hartford Courant Co. v. Pellegrino, 380 F.3d 83, 96 (2d Cir. 2004) (internal quotation marks and citations omitted). No protective order shall be submitted that provides for sealing of documents or other information in connection with a submission to the Court, except following a motion supported by competent evidence showing that sealing is essential to preserve higher values and is narrowly tailored to serve that interest. All protective orders shall comply with this entire Rule 4, and are subject to ongoing review and reexamination by the Court.

B. Filing Materials under Seal. Notwithstanding any protective order, any party seeking to file materials under seal (whether as part of a motion, a pretrial filing, or other submission) is required to move for permission to file the materials under seal contemporaneously. The party shall do so according to the following procedures.

- i. **ECF cases.** For ECF cases, the party shall file the notice of motion and redacted versions of the briefing and any supporting materials on ECF, and shall submit unredacted copies to Chambers, specifying those portions sought to be sealed and setting forth the reasons why sealing is appropriate under the circumstances. For exhibits over 100 cumulative pages, the party shall submit the unredacted documents by CD only. If the Court grants the motion to file under seal, the party shall file unredacted papers under seal in conformity with the procedures set forth by the Clerk of Court. If the motion is denied, the party may withdraw the motion without prejudice to refile, or maintain the motion by filing unredacted copies of the briefing and supporting materials on ECF.

- ii. **Non-ECF cases.** For non-ECF cases, the party shall file the notice of motion and redacted copies of the briefing and supporting materials with the Clerk, and shall submit unredacted copies to Chambers, specifying those portions sought to be sealed and setting forth the reasons why sealing is appropriate under the circumstances. Upon the Court's ruling, the party shall either withdraw the motion without prejudice to renewal, or file unredacted versions of the briefing and supporting materials with the Clerk.
- 5. **Settlements.** In the case of settlements, requests that the Court retain jurisdiction will be considered only if all documents relating to the settlement are exhibited to the Court for review and further instructions, which may include requiring the parties to file all such documents and make them publicly accessible.
- 6. **Notice for Collective Action Lawsuits.** Parties moving the Court to approve a collective action notice shall use the template attached.

-----X		
	:	_____ Civ. _____ (AKH)
	:	
	:	
Plaintiff(s),	:	
	:	<u>CIVIL CASE MANAGEMENT PLAN</u>
-against-	:	
	:	
	:	
	:	
	:	
Defendant(s).	:	
	:	
-----X		

After consultation with counsel for the parties, the following Case Management Plan is adopted. This plan is also a scheduling order pursuant to Rules 16 and 26(f) of the Federal Rules of Civil Procedure.

- A. The case (is) (is not) to be tried to a jury. [Circle as appropriate].
- B. Non-Expert Discovery:
1. The parties are to conduct discovery in accordance with the Federal Rules of Civil Procedure and the Local Rules of the Southern District of New York. All non-expert discovery is to be completed by _____, which date shall not be adjourned except upon a showing of good cause and further order of the Court. Interim deadlines for specific discovery activities may be extended by the parties on consent without application to the Court, provided the parties are certain that they can still meet the discovery completion date ordered by the Court.
 - a. The parties shall list the contemplated discovery activities and anticipated completion dates in Attachment A, annexed hereto.
 2. Joinder of additional parties must be accomplished by _____.
 3. Amended pleadings may be filed without leave of the Court until _____.
- C. For all causes of action seeking monetary damages, each party shall identify and

quantify in Attachment B, annexed hereto, each component of damages alleged; or, if not known, specify and indicate by what date Attachment B shall be filed providing such information.

D. Motions, Settlement, Second Pre-Trial Conference, and Expert Discovery:

1. Upon the conclusion of non-expert discovery, and no later than the date provided below, the parties may file dispositive motions. The parties shall agree to a schedule, and promptly submit same for the Court's approval, providing for no more than three rounds of serving and filing papers: supporting affidavits and briefs, opposing affidavits and briefs, and reply affidavits and briefs. The last day for filing dispositive motions shall be _____. (Counsel shall insert a date 30 days after the completion date for non-expert discovery.)
 - a. There shall be no cross-motions. Any motions not made by the agreed date shall, unless the court orders otherwise, not be considered until after the timely-filed motion is determined.
 - b. Papers served and filed by the parties shall conform to the requirements set out in the Court's Individual Rules.
2. Either before or after the motion schedule set out above, counsel for the parties shall meet for at least two hours at the office of plaintiff's counsel, to discuss settlement. The date for the meeting is _____, at _____m. (Counsel shall insert a date but, at the option of either, the date may be canceled upon the service or filing of a dispositive motion and notice to the court.)
3. Approximately one week thereafter, the parties shall meet with the Court for a Second Case Management Conference to discuss the status of the case, the status and prospects of settlement and whether alternative disputes-resolution procedures should be utilized, the need for and a schedule regulating experts and expert-discovery, a discovery bar date, and any other issue counsel or the Court wish to discuss. The Case Management Conference will be held on _____, at _____m. (The Court will set this date at the Initial Case Management Conference.)

- E. Any request for relief from any date provided in this Case Management Plan shall conform to the Court's Individual Rules, and include an order, showing consents and disagreements of all counsel, setting out all dates that are likely to be affected by the granting of the relief requested, and proposed modified dates. Unless and until the Court approves the proposed order, the dates provided in this Plan shall be binding.

F. A final pre-trial conference will be held on a date to be set, as close as possible to the date that trial is expected to begin. The parties, three days before said meeting, shall submit their pre-trial order, conforming to the Court's Individual Rules and, at the conference, deliver their exhibit books containing all exhibits the parties actually intend to offer at the trial.

G. Pre-Trial Motions:

Applications for adjournments and for discovery or procedural rulings will reflect or contain the positions of all parties, and otherwise conform to my Individual Rule 1(D). Unless the Court rules otherwise, motions shall not modify or delay the conduct of discovery or the schedules provided in this Case Management Plan.

SO ORDERED.

DATED: New York, New York

_____, 20__

ALVIN K. HELLERSTEIN
United States District Judge

ATTACHMENT A

The Parties are to list the discovery activities (i.e., production of documents, number of depositions, requests to admit, interrogatories) and anticipated completion dates:

<u>DISCOVERY ACTIVITIES</u>	<u>COMPLETION DATE</u>
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	

ATTACHMENT B

For all causes of action seeking monetary damages, each party shall identify and quantify each component of damages alleged:

1. PLAINTIFF'S CLAIMS:

2. COUNTERCLAIMS AND CROSS-CLAIMS:

3. THIRD-PARTY CLAIMS:

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X		
[JANE DOE], Individually and on	:	FORM NOTICE TEMPLATE [14 Civ. 1234] (AKH)
Behalf of All Other Persons Similarly Situated,	:	
	:	
Plaintiffs,	:	
	:	
-against-	:	
	:	
[JOHN DOES],	:	
	:	
Defendants.	:	
-----X		

NOTICE OF COLLECTIVE ACTION LAWSUIT

TO: [DEFINE CLASS]

DATE:

RE: Fair Labor Standards Act Lawsuit filed against [DEFENDANTS]

I. WHAT THE LAWSUIT IS ABOUT

[SUMMARIZE COMPLAINT]

II. COMPOSITION OF THE COLLECTIVE ACTION

The named Plaintiff seeks to sue on behalf of herself, and on behalf of other employees who may wish to join her lawsuit and who are similarly situated.

III. NO OPINION EXPRESSED AS TO THE MERITS OF THE CASE

Although the Court has authorized the Plaintiff to send this Notice, the Court expresses no opinion regarding the merits of the claims. This Notice should not be taken as an indication that you should or should not join this lawsuit.

IV. YOUR OPTIONS REGARDING THE LAWSUIT

You may elect to join this lawsuit, bring your own separate lawsuit, or not do anything. If you intend to join the lawsuit, you must complete the enclosed consent to become a plaintiff form by **[insert 45 days from the date of notice]** _____, and send it to the following address:

[PLAINTIFF ATTORNEY NAME]
[STREET ADDRESS]
[TELEPHONE & FAX]
[EMAIL]

You may elect to participate in the lawsuit using [PLAINTIFF'S ATTORNEY NAME] as your counsel, or you may join using your own counsel. [PLAINTIFF'S ATTORNEY NAME] will promptly file the elections to join that he receives.

V. EFFECT OF JOINING THIS ACTION

If you choose to join this lawsuit, you will be bound by any outcome, whether favorable or unfavorable. If the Plaintiff and anyone else who joins this lawsuit prevail at trial, or a settlement is reached, you may be entitled to share in any money recovered, less your share of expenses, including the fees and expenses of plaintiffs' lawyers as may be allowed by the court. On the other hand, if the [DEFENDANTS] prevail, you may not recover any money.

If you choose to join the lawsuit, and while the suit is proceeding, you may be required to answer written questions, provide information and documents (including electronic records), appear for a deposition to give testimony under oath, and testify in court.

You can also join this lawsuit by counsel of your own choosing. If you do so, your attorney must file an "opt-in" consent form by _____ **[insert date that is 45 days from date of notice mailing]**.

VI. EFFECTS OF NOT JOINING THIS LAWSUIT

If you choose not to join this lawsuit, you do not need to do anything. If you do not join this lawsuit, you will not be a part of the case in any way, and will not be bound by any resolution, whether favorable or unfavorable. You should be aware that a claim under the FLSA must be brought within two (2) years of the date the claim accrues, unless you can prove that your employer's violation was "willful," in which case the claim must be brought within three (3) years.

VII. NO RETALIATION PERMITTED

Federal and state law prohibits an employer from discriminating or retaliating against you for choosing to join this lawsuit or otherwise exercising your existing rights under the FLSA.

VIII. LEGAL REPRESENTATION FOR THE DEFENDANTS

The [DEFENDANTS] are represented by [DEFENDANTS' ATTORNEY NAME, FIRM NAME, AND CITY WHERE FIRM IS LOCATED].

CONSENT TO JOIN

1. [STATE YOUR NAME, ADDRESS, AND PHONE NUMBER]
2. [STATE IF YOU WISH TO BE REPRESENTED BY PLAINTIFF'S ATTORNEY OR YOUR OWN ATTORNEY. IF YOU WISH TO BE REPRESENTED BY YOUR OWN ATTORNEY, STATE YOUR ATTORNEY'S NAME, ADDRESS, AND PHONE NUMBER. THAT ATTORNEY MUST FILE A NOTICE OF APPEARANCE PROMPTLY WITH THE CLERK OF THE COURT.]
3. [STATE THE RELEVANT FACTS, CIRCUMSTANCES, AND DATES AS TO WHICH YOU BELIEVE YOU ARE SIMILARLY SITUATED WITH PLAINTIFF AS TO THE SAME EMPLOYER NAMED IN THE LAWSUIT.]
4. SIGN BEFORE A NOTARY REPUBLIC.